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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

GRONER ENTERPRISES, INC., Plaintiff and Appellant, v. AMERICAN REALTY TRUST, INC., Defendant and Appellant.	E048222 (Super.Ct.No. INC040725) OPINION

APPEAL from the Superior Court of Riverside County. Arjuna T. Saraydarian, (Retired judge of the Riv. Sup. Ct., , assigned by the Chief Justice pursuant to art. VI, § 6, of the Cal. Const.) Judge. Affirmed; cross-appeal dismissed.

Anderholt & Turner, James D. Turner and Nikki B. Allen for Plaintiff and Appellant.

Roemer & Harnik, Brian S. Harnik and Helene P. Dreyer for Defendant and Appellant.

I. Introduction

American Realty Trust, Inc. (ART) owned 409 acres of undeveloped land in Palm

Desert that it sought to develop as a golf resort or, alternatively, sell as raw land. Ultimately, ART sold part of the undeveloped property (171 acres) to the City of Palm Desert and part (238 acres) to a company owned by Michael Marix. Groner Enterprises, Inc. (Groner)[1] sued for breach of a written finder's fee contract.

After a jury found in favor of Groner, the judge granted a judgment notwithstanding the verdict (JNOV). Groner appeals and ART has filed a cross-appeal concerning the original judgment.

We conclude there is not substantial evidence to support Groner's claim to a finder's fee and the trial court properly granted the motion for JNOV.

II. Factual and Procedural Background

A. Allred/ART's Testimony

At the time of trial in January 2009, Dan Allred was employed as a real estate consultant by Marix. Previously, Allred had been a principal with ART from 1996 until 2005.

Beginning in 1998, ART sought to identify buyers to participate in the development of the golf resort, including residential housing, for the Desert Wells project in Palm Desert. The tentative parcel map included a golf course, a clubhouse, a hotel, and 780 lots. In February 1999, ART had received three pending offers to buy the residential portion of Desert Wells, including one from Cornerstone Builders, Marix's company. But, in 2000, ART had decided it might not be feasible to proceed with the

[1] An individual, John Groner, is the sole shareholder and director of Groner. He did not testify at trial because of illness.

golf course. The tentative parcel map for the proposed original development was scheduled to expire in the summer of 2002.

In March 2002, ART was still hoping to proceed with the original golf resort and residential development. On March 7, Groner and ART executed a written agreement for a 3 percent finder's fee, serving to register various prospective buyers, including Cornerstone Builders, to purchase residential lots to be developed around the golf course, as contemplated by the tentative parcel map.

The finder's fee letter agreement was prepared by Groner. Allred signed the agreements on behalf of ART. But Allred denied "emphatically" that, as stated in the letter agreement, Groner had introduced him and ART to Marix two years before and that there had been several meetings between them concerning development. Instead, Allred claimed he had first suggested to Groner that he contact Marix about making a purchase.

After the tentative map for the Desert Wells project expired in the summer of 2002, it was not subject to renewal. Subsequently ART sold 171 unmapped acres to the city for $70,000 an acre. In November 2002, while a new tentative parcel map was being processed, ART and Cornerstone executed a contract of sale for 238 unmapped acres at a price of $23,800,000.

Allred maintained that Groner did not procure Marix as a buyer for ART's proposed original development. Instead, the procurement of Marix as a buyer of 238 acres of unmapped land was accomplished through a broker, Baxley Properties. The purchase contract provided a broker's commission for Baxley Properties acting as a dual agent.

B. Marix's Testimony

Marix testified that he first met Allred on an earlier project in Beaumont. Marix had never met or spoken to John Groner. Marix did not remember offering to buy the residential portion of Desert Wells in 1999. Groner did not have any involvement with Marix purchasing the Desert Wells property. Instead, Marix was represented by Dick Baxley. In September 2002, Marix wrote Groner a letter declining to consider a proposal to buy the Desert Wells residential property because he was not engaged in building attached units or golf courses.

C. Groner's Deposition

Portions of Groner's deposition were read at trial, particularly the following by the defense:

"Q. In the Marix letter it says, 'I introduced you to Mr. Marix some two years ago.

"A. Uh-huh.

"Q. That statement as of March 7, 2002, was inaccurate; correct?

"A. That's correct.

"Q. And the statement in the second paragraph that says, 'And we have had several meetings concerning his participation with regard to Desert Wells' was inaccurate as of March 7, 2002, correct?

"A. Yes."

"Q. But, again, prior to the date of March 7, you did not introduce Dan Allred to Mike Marix; true?

"A. I stated earlier that I had not introduced Dan to Michael Marix, that I had thought that he would be a candidate, he was a longshot candidate, and that, you know, I put him down, and Dan signed the letter of agreement.

"Q. And prior to March 7, 2002, you had not participated in meetings between Mike Marix and Dan Allred; true?

"A. Or any of the other people. True."

"Q. But you had not had interaction with Marix before March 7, 2002; correct:

"A. No. You're right, I did not.

"Q. You answered double negative. It's correct that you did not have any interaction with Marix prior to March 7, 2002?

"A. No. I put him with the group that I had said because I felt maybe he had an outside shot. [¶] . . . [¶]

"Q. "So you were registering Mike Marix and Mike Marix's company really as a longshot in your mind; true?

"A. Yeah. They come in every now and then. . . ."

Groner also presented portions of his own deposition:

"A. . . . and I gave him [Allred] Mike Marix because he was the biggest lot owner out in La Quinta at one time. [¶] … I didn't expect Mike Marix to do the deal at all. But I think that there was a year or two years between the time I gave him Mike Marix's name and the time he did the deal.

"Q. How did you come up with Mike Marix's name? How did you know that he was a potential suit[e]r?

"A. Because I just finished telling you he was the—I learned that he was one of the biggest lot owners in La Quinta."

"A. . . . I am a layman, I put these letters together the best I could. I didn't know what was going to come out of the situation. And it was my opinion that I would be paid a finder's fee if these people did the deal. No lots, no this, no map. [¶] . . . [¶]

"Q. Anything related to Desert Wells any time in the future?

"A. Desert Wells, that's right."

D. Verdict and JNOV

At the conclusion of the evidence, the trial court denied ART's motion for a directed verdict, commenting there were some "inconsistencies" for a jury to resolve.

In its special verdict, the jury made a finding that Groner had taken actions that resulted in the accomplishment of the objective of the finder's fee agreement. The jury found in favor of Groner for $713,550.

Subsequently, the trial court granted ART's motion for JNOV. It found that Marix's testimony about not having any dealings with Groner was uncontradicted. John Groner, in his deposition, also admitted that he had no interaction with Marix, whom he described as a "longshot." The finder's fee letter, which he had prepared, was inaccurate on that point. The court also determined that Groner's own statements negated any claim to a finder's fee because he admitted he had done nothing to procure a buyer for ART's property.

III. Analysis

The standard of review favors Groner: "In passing upon the propriety of a judgment notwithstanding the verdict, appellate courts view the evidence in the light most favorable to the party who obtained the verdict and against the party to whom the judgment notwithstanding the verdict was awarded. [Citations.] In other words, we apply the substantial evidence test to the jury verdict, ignoring the judgment." (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 546.) Furthermore, "[i]n reviewing the sufficiency of the evidence, '"the power of an appellate court *begins* and *ends* with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact." [Citations.]' [Citation.] '[A]ll conflicts must be resolved in favor of the respondent, and all legitimate and reasonable inferences indulged in to uphold the verdict if possible.' [Citations.] " (*Taylor v. Roseville Toyota, Inc.* (2006) 138 Cal.App.4th 994, 1004.)

We agree with the trial court there is not substantial evidence to support a verdict for Groner. (*Roddenberry v. Roddenbery* (1996) 44 Cal.App.4th 634, 653-654.) Groner tries to argue that the evidence must be viewed in a light favorable to the verdict and only the jury can evaluate whether the evidence is contradictory, inconsistent, or conflicting and whether there are material issues of credibility. (*Clemmer v. Hartford Ins. Co.* (1978) 22 Cal.3d 865, 878.) We generally agree with these legal principles but we disagree that the evidence here is materially contradictory, inconsistent, conflicting, or involves issues of credibility. Instead, everyone involved—Allred, Marix, and Groner—

all agreed that Groner did not know Marix, had not met him, and had not facilitated the purchase between ART and Marix.

The evidence relied upon by Groner is mischaracterized. Although Allred signed the letter fee agreement with Groner, it was the Desert Wells property, as it was to be developed, which was the subject of the finder's fee agreement. But, it is undisputed that, after the tentative parcel map had expired, Marix bought unmapped land and not the original Desert Wells project.

Furthermore, as Groner acknowledges, the most Groner may have done in connection with the sale to Marix was to mention Marix's name to Allred. A finder's fee may be appropriate when an introduction, such as supplying a name, sets in motion a chain of events which lead without material interruption to the acquisition. (*Zalk v. General Exploration Co.* (1980) 105 Cal.App.3d 786, 792; *Pass v. Industrial Asphalt of California, Inc.* (1966) 239 Cal.App.2d 776, 781, 783.) But that is not what occurred in this instance. As Groner himself asserted, Marix was already known by Allred since 1999 and was also well known generally as "the biggest lot owner" in the area. Groner's own admissions, which he now tries to disavow, wholly refute his claims. (*Mikialian v. City of Los Angeles* (1978) 79 Cal.App.3d 150, 161, citing *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1.) There was simply no evidence, disputed or not, to support Groner's claim that he procured Marix as the buyer for ART's property. (*Roddenberry v. Roddenberry, supra,* 44 Cal.App.4th at p. 654.)

We also reject Groner's argument that the trial court could not grant ART's motion for JNOV after denying ART's earlier motion for directed verdict. (*Rollenhagen*

v. City of Orange (1981) 116 Cal.App.3d 414, 417, disapproved on other grounds in *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 738.) For several good reasons, a trial judge may deny a directed verdict motion and prefer to resolve the legal issues posed on a JNOV motion after the jury returns its verdict. (*Beavers v. Allstate Ins. Co.* (1990) 225 Cal.App.3d 310, 328, fn. 6.)

IV. Disposition

We affirm the judgment and dismiss the cross-appeal as moot. (*Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 60.) ART, the prevailing party, shall recover its costs on appeal.

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s/Richli
J.

We concur:

s/Ramirez
P. J.

s/King
J.